

2006-11-21 15:00:00

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MARGARET A. SARGENT,

Civ. No. 05-237-HO

Plaintiff,

ORDER

v.

Commissioner of Social Security,

Defendant.

Plaintiff seeks review of the decision of the Commissioner denying her application for supplemental security income benefits. The Commissioner moves for an order remanding the case for further proceedings.

Discussion

The Commissioner concedes that the decision of the administrative law judge (ALJ) does not explain the weight the ALJ gave to the 2002 opinion of plaintiff's treating physician, Dr. Moher, despite the order of the Appeals Council that the ALJ

do so. Dr. Moher opined that plaintiff cannot work. (Tr. 412). The Commissioner further concedes that the ALJ's decision does not consider the 2000 opinion of examining psychologist Dr. Wicher that it was unlikely that plaintiff could obtain and maintain stable employment independently during the next twelve months. (Tr. 284). The ALJ's decision incorporates a prior decision summarizing Dr. Wicher's report, but the ALJ does not explain the weight given to Dr. Wicher's opinion. (Tr. 13, 36). The Commissioner argues that the case should be remanded for the ALJ to consider and explain the weight accorded to these medical opinions and an April 2001 report of Dr. Wicher, and, if necessary, to obtain additional testimony from a vocational expert. The Commissioner further argues without citation to authority that plaintiff's lack of credibility precludes a remand for award of benefits.

The court credits the improperly rejected medical opinions as true and remands for an award of benefits. See Smolen v. Chater, 80 F.3d 1273, 1292 (9th Cir. 1996). There are no outstanding issues. The ALJ had two opportunities to obtain Dr. Wicher's April 2001 report. (Tr. 120). Dr. Wicher's 2003 report
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suggests that the 2001 report is consistent with the 2000 and 2003 reports. (Tr. 120, 417).

Discussion

Based on the foregoing, the decision of the Commissioner is reversed. This matter is remanded to the Commissioner for payment of benefits.

IT IS SO ORDERED.

DATED this 6th day of July, 2006.


United States District Judge